

IN THE KENTUCKY PUBLIC SERVICE COMMISSION

IN RE: INVESTIGATION:

Case No. 2003-00433
AN ADJUSTMENT OF THE GAS AND ELECTRIC RATES,
TERMS, AND CONDITIONS OF LOUISVILLE GAS AND
ELECTRIC COMPANY

and

Case No. 2003-00434
AN ADJUSTMENT OF THE ELECTRIC RATES, TERMS, AND
CONDITIONS OF KENTUCKY UTILITIES COMPANY

* * *

SWORN STATEMENT

OF

JOHN MCCALL

JULY 28, 2005

received
8/9/05
MN

ELLEN L. COULTER, RPR
Coulter Reporting, LLC
101 East Kentucky Street
Suite 200
Louisville, Kentucky 40203
(502) 582-1627
FAX: (502) 587-6299
E-MAIL: CoulterLLC@bellsouth.net

A P P E A R A N C E S

SPECIAL GENERAL COUNSEL TO THE PUBLIC SERVICE
COMMISSION:

JONATHAN D. GOLDBERG
Goldberg & Simpson
3000 National City Tower
101 South Fifth Street
Louisville, Kentucky 40202

FOR THE WITNESS:

SHERYL G. SNYDER
DAVID KAPLAN
Frost, Brown, Todd, LLC
3200 Aegon Center
400 West Market Street
Louisville, Kentucky 40202

1
2 The sworn statement of JOHN McCALL,
3 taken in the offices of Goldberg & Simpson,
4 3000 National City Tower, 101 South Fifth Street,
5 Louisville, Kentucky, on Thursday, the 28th day of
6 July, 2005, at approximately 10:45 a.m.

7
8 EXAMINATION

9
10 BY MR. GOLDBERG:

11 Q. Would you state your name, sir.

12 A. John McCall, M-C-C-A-L-L.

13 Q. All right, sir. As you know, because
14 we're acquainted with each other, I'm Jon Goldberg,
15 and I've been retained by the Public Service
16 Commission to do an investigation of certain events
17 surrounding the rate cases of LG&E and KU. The rate
18 case we sometimes refer to -- cases as 00433 and
19 00434. And my charge, if you will, Mr. McCall, is to
20 determine -- help the commissioners determine whether
21 or not there was any ex parte communication,
22 collusion and/or inappropriate behavior as part of
23 the two rate cases that were presented to the Public
24 Service Commission in May of 2004. What we are doing
25 is taking statements of people who participated in

1 the process to get a determination of what they knew,
2 if anything.

3 Your name appeared on the sign-in
4 sheets, so that's where we obtained knowledge about
5 you and your participation. So with that, what we'd
6 like to do is take your statement. Ms. Coulter will
7 take it down. It may feel like a deposition, but
8 it's not. It's a statement. And any help you can
9 give us, we would appreciate. At the conclusion,
10 she'll write it up, send it out to you and hopefully
11 you'll sign it and send it back to us.

12 A. I'll do my best.

13 Q. That's the process. Can you tell me
14 your business address?

15 A. 220 West Main Street, Louisville,
16 Kentucky, 40202.

17 Q. That is the corporate office of LG&E,
18 LLC?

19 A. LG&E Energy, LLC, that is correct.

20 Q. Thank you. And I trust you're
21 employed by LG&E Energy, LLC?

22 A. That is correct.

23 Q. Okay. And what is your capacity?

24 A. Executive vice president, general
25 counsel and corporate secretary.

1 Q. All right. Are you the head lawyer,
2 as it were, for LG&E Energy?

3 A. I am.

4 Q. All right, sir. And how long have you
5 been in that capacity?

6 A. For 11 years.

7 Q. All right. I trust you are familiar
8 with the two rate cases earlier described to you?

9 A. I am.

10 Q. Okay. Can you tell me what your
11 participation was in those rate cases?

12 A. The regulatory function at LG&E also
13 reports to me. A matter of rates of the regulated
14 utilities is a matter of executive interest, concern
15 and responsibility. So in a variety of ways, the
16 overall subject of rate regulation is a -- an
17 executive responsibility as well as a specific
18 responsibility of mine. And any planning,
19 preparation associated with the presentation of a
20 rate case would fall under my area of responsibility
21 and be a matter which I would have great interest and
22 concern.

23 Q. All right, sir. Beside having
24 interest and concern, did you actually participate at
25 the various hearings and negotiations that occurred

1 in these two rate cases?

2 A. I did not actively participate in the
3 hearings as either a witness or as trial counsel. I
4 was present at the hearings, and I did participate in
5 the negotiating sessions.

6 Q. To your knowledge, were you at all the
7 negotiation sessions?

8 A. I was at all of the sessions, but
9 there were breakout components of the sessions that I
10 was not present for.

11 Q. Okay. Did you put together a team,
12 both in-house and outside, to deal with the two rate
13 cases, a team of professionals?

14 A. When you say "to deal with two rate
15 cases," there is organized structure within the
16 company that deals with aspects of rate cases. I did
17 put together, did oversee the team that was
18 responsible for the hearing preparation and
19 presentation. And I did participate in forming the
20 team that was involved in the negotiating of those
21 rate cases.

22 Q. Were they one and the same?

23 A. They were very similar. There were
24 witnesses involved in the rate case hearings that
25 were not involved in the negotiations.

1 Q. Okay. With regard to the Public
2 Service Commission as a whole, is dealing with the
3 Public Service Commission and its employees one of
4 your responsibilities?

5 A. It comes under my responsibility. The
6 actual regular communication with the commission is
7 something others who work under me typically perform.
8 I do get involved on rare occasions.

9 Q. All right. By way of example, does
10 Mr. Siemens work -- report to you?

11 A. He does.

12 Q. Okay. What is your understanding of
13 what Mr. Siemens' role is with regard to the Public
14 Service Commission?

15 A. Mr. Siemens' title is vice president,
16 external affairs, meaning that he is responsible for
17 our external relationships, which includes political
18 relationships. It includes regulatory relationships.
19 It includes community relationships. He has long
20 been a component of our Frankfort presence, which
21 includes the Public Service Commission.

22 Q. All right, sir. Are you yourself
23 personally familiar with members of the Public
24 Service Commission?

25 A. To a degree, yes.

1 Q. Okay. Let me ask you whether you know
2 some of those members. Do you know Marty Huelsman?

3 A. I do.

4 Q. Okay. And at what context, work
5 and/or social, do you know Marty Huelsman?

6 A. The really only context in which I
7 know Mr. Huelsman is in relation to his functions
8 with the Public Service Commission. I did not know
9 him until after he became a commissioner. And I knew
10 him both as a commissioner and as chairman of the
11 commission. I have never had any social contact with
12 him outside of his role as a member of the
13 commission.

14 Q. Okay. Do you recall when LG&E Energy
15 first decided to apply for a -- or to file rate cases
16 00433 and 00434?

17 A. I have a general recollection of that.
18 I'm not sure how precise I can be.

19 Q. All right. Fair enough. When do you
20 believe that was, best recollection?

21 A. The fall of 2003.

22 Q. Okay.

23 A. But I can't give you a specific date.

24 Q. All right, sir. What places that date
25 for you in your memory, recollection?

1 A. I know that we filed in late December
2 of 2003, filed the rate cases in late December. And
3 there was a period of weeks involved in preparing
4 those filings, that preparation of those filings
5 followed the decision to file a rate case.

6 Q. All right, sir. Are you familiar with
7 the term "notice of filing"?

8 A. Yes, I am.

9 Q. Okay. Do you have a recollection of
10 when the notice of filing was actually filed?

11 A. I hope I don't show more ignorance
12 than I should, but I believe it was November --

13 Q. All right, sir.

14 A. -- of 2003.

15 Q. It's not a quiz, but that is the
16 correct answer. Do you have a recollection that from
17 a business viewpoint sometime obviously prior to
18 November of 2003, LG&E Energy, LLC, decided to move
19 forward with the two rate cases?

20 A. Yes. We made the decision. It was
21 the decision to move forward that kicked off the
22 preparation of the notice of filing and the actual
23 filing itself, and that was in the fall of 2003. But
24 again, a specific date I can't tell you. Late
25 summer, fall 2003, that time frame.

1 Q. And using that time through the end of
2 the hearing process -- let's call that all in June of
3 2004 -- did you ever have occasion to talk to Marty
4 Huelmsman about the two rate cases?

5 A. Not out of the context of the hearing
6 itself or -- not out of the context of the hearing
7 itself.

8 Q. All right. And when you say "context
9 of the hearing itself," are you referring to in his
10 capacity as chairman hearing testimony?

11 A. That's correct.

12 Q. All right. So that we're clear, you
13 never had any other direct conversations with him
14 about the rate cases. Am I interpreting that
15 correctly?

16 A. That is correct.

17 Q. Okay. Let me ask you the same
18 question, same time frame, as it relates to any of
19 the other commissioners.

20 A. The same answer applies to both
21 Commissioner Williams and Commissioner -- Chairman
22 Goss.

23 Q. Okay. As you know, there was some
24 coming and going during this time period with regard
25 to the commissioners themselves. Let me ask you that

1 same question with regard to former Commissioner Gary
2 Gillis.

3 A. Same answer as -- applies.

4 Q. All right, sir. And let me also ask
5 you that same question with regard to Commissioner
6 Bob Spurlin.

7 A. I don't recall precisely the date of
8 his departure from the commission, but it was at or
9 about the time that I -- my memory is it was the
10 latter part of 2003, but it may have been early 2004,
11 but the same answer applies. No conversations with
12 Commissioner Spurlin.

13 Q. Do I take it, then, that it would be
14 your statement that you've never had a conversation,
15 other than on the record, with any of the
16 commissioners about the two rate cases?

17 A. That is correct.

18 Q. All right, sir. Let me ask you the
19 same question with regard to employees of the Public
20 Service Commission. Other than as a colloquy on the
21 record, have you ever had any conversations about the
22 two rate cases with members of the Public Service
23 Commission staff?

24 A. I have had no substantive -- I've had
25 no discussions with any member of the staff during

1 that time period regarding any substantive matters
2 pending before the commission regarding the rate
3 cases. It is possible that there were light comments
4 about when are we going to start the hearing, or when
5 are we going to take a break, or other kinds of
6 conversation that may have occurred with staff in
7 either the hearing room or the hallway, whatever, and
8 I did, with other interveners, have conversation with
9 Mr. Raff in his capacity as a mediator during the
10 settlement discussions. But all of those were in the
11 context of that settlement. They related only to the
12 matters under settlement discussion, and they were
13 all in the presence of one or more of the other
14 interveners.

15 Q. All right, sir. I want to ask you
16 about some names. And I'm identifying these people
17 who are people that work for the Public Service
18 Commission and ask you the same question. Do you
19 know Mr. Isaac Scott?

20 A. I do.

21 Q. Okay. And other than in the context
22 of negotiation with other parties, did you ever have
23 occasion to talk about the rate cases with him?

24 A. I did not.

25 Q. Okay. Are you familiar with Mr. Jeff

1 Shaw?

2 A. I am.

3 Q. Okay. And same question. Other than
4 in the context of negotiation of the rate cases along
5 with other parties, did you ever have any occasion to
6 talk to him about the rate cases?

7 A. I did not.

8 Q. Okay. Are you familiar with Mr. Faud
9 Sharifi?

10 A. I know who he is. I don't believe he
11 knows me. And we, to my knowledge, have never had
12 any discussion on any subject at any time.

13 Q. All right, sir. Ms. Andrea Edwards,
14 do you know her?

15 A. I do not, I'm sorry to say.

16 Q. Ms. Martha Morton, do you know her?

17 A. I do know Martha Morton. I have had
18 matters such as safety issues for discussion with her
19 in the very distant past. I've had no discussion
20 with her regarding these rate cases.

21 Q. All right, sir. Now, let me take you
22 to the actual meetings themselves. And the first
23 date when the parties were together formally was
24 April the 28th, 2004, which would have been a
25 Wednesday. It would have been the setting of the

1 informal conference. Do you have a recollection of
2 having come to the Public Service Commission and
3 participated on that day?

4 A. I do.

5 Q. Okay. Tell me what you recall
6 generally about the date and your participation.

7 A. In the context that I have not talked
8 with others or tried to review for this interview
9 specifics of matters that occurred, I will have to
10 tell you that my memory is a little fuzzy about the
11 specifics of that day versus the following day versus
12 other --

13 Q. All right, sir.

14 A. -- discussions that were held in the
15 context.

16 But generally speaking, an informal
17 conference was set. We understood that there was an
18 interest in settling at least some portion of the
19 rate case, both on the part of the -- some of the
20 interveners and the staff. So we went with an
21 expectation of at least exploring some issues for
22 settlement. Once there, we learned that there was an
23 interest on the part of both the staff and other
24 interveners in at least exploring a broader
25 settlement of the entire rate case.

1 Q. Okay. Who was --

2 A. And we did engage in discussion in the
3 course of that day regarding what the issues were and
4 what the prospects were for settlement.

5 Q. Okay. What was your understanding of
6 who were the interveners?

7 A. I won't be able to remember them all,
8 but they were -- include the KIUC, the attorney
9 general, the Department of Defense, several low
10 income representatives, Kroger's, North American
11 Stainless, Lexington-Fayette Urban County Government.
12 I believe those were the principal interveners.
13 There may have been a couple of others that had
14 relatively modest levels of participation, either at
15 hearings or in settlement discussions.

16 Q. All right. Do you have a recognition
17 of who the team that was involved in the negotiation
18 process with the Public Service Commission was
19 comprised of?

20 A. No. I -- I can tell you some names,
21 but I don't -- there was certainly never a team
22 identified as such. Clearly, Richard Raff was the
23 leading staff spokesperson with regard to
24 negotiations. Isaac Scott participated in a portion.
25 Jeff Shaw participated. Other people were in and out

1 of the room. Whether they were part of a team or
2 not, I don't know.

3 Q. All right.

4 A. But those are the ones that were
5 principally involved.

6 Q. What was your understanding of what
7 role PSC staff was playing in these discussions?

8 A. Well, the term "mediator" was
9 specifically used with regard to Richard Raff.
10 Whether he formally used that title or not, I don't
11 specifically recall, but he did to some degree play a
12 role of mediator in exploring whether or not
13 settlement of issues could be achieved. He also,
14 however, was clearly representing the views of
15 commission staff and always uncertain as to how much
16 he was representing the views of the commission, but
17 certainly the commission staff, in whether or not the
18 staff found positions regarding settlement acceptable
19 or not. So he, to some degree, was both a mediator
20 and to some extent a party to the settlement, or a
21 representative of a party to the settlement.

22 Q. Okay. And did you have an
23 understanding of who was representing the attorney
24 general?

25 A. Dennis Howard and Betsy Blackford were

1 representing the attorney general --

2 Q. Okay.

3 A. -- in all aspects of discussion, save
4 one, when the attorney general himself spoke for
5 himself.

6 Q. All right. And was it your
7 understanding they participated in all discussions
8 and negotiations, "they" being the attorney general's
9 staff?

10 A. They did.

11 Q. I trust they were present every day
12 you were present?

13 A. They were.

14 Q. Do you remember anything significant
15 about April the 28th? That would have been a
16 Wednesday. And to put it in a frame of reference for
17 you, Thursday, the 29th, the 30th, Oaks Day, and
18 obviously the 1st being Derby Day.

19 A. I remember the 28th. I clearly
20 remember some of the events of the 29th. I clearly
21 remember the 30th because it was in a different venue
22 than the other two meetings had been in. I do know
23 that on the 28th we made more progress than, frankly,
24 I had expected with regard to resolving some issues,
25 but I would be a little hard-pressed to tell you

1 specifically what issues were resolved on which day.
2 I do know that we were far apart on the rate issue
3 itself for the electric side at the end of the day on
4 the 28th. I could only give you general numbers as
5 to where positions were because I don't remember them
6 specifically, but that's probably without some kind
7 of refreshing that I -- as far as I could go about
8 the 28th.

9 Q. You were represented by Mr. Riggs as
10 legal counsel?

11 A. Mr. Riggs and Mr. Walter Sales --

12 Q. Right.

13 A. -- were there, yes.

14 Q. Okay. And I trust they were doing
15 some of the negotiation?

16 A. They were involved in the
17 negotiations. Mr. Sales was more involved with the
18 North American Stainless issues. And a lot of that
19 discussion occurred outside my presence, and so I
20 can't tell you much about that. Most of what
21 Mr. Riggs was involved in I was present for, so I
22 know far more about his involvement.

23 Q. So that I get an understanding of who
24 LG&E Energy, LLC's negotiating team was, I take it it
25 was yourself, Mr. Riggs. Mr. Sales is dealing with

1 North American Stainless issues. Anyone else?

2 A. Yes. Steve Seelye was our rate of --
3 rate-making specialist, consultant, who was with us.
4 Kent Blake was there as a member of the regulatory
5 group. Mike Beer, who was head of rates and
6 regulation at that time -- it's vice president of
7 rates and regulation -- was present. Dorothy
8 O'Brien, who was the deputy general counsel, was
9 present. And Martin Gallis, who was primarily
10 involved in the North American Stainless issues, was
11 present.

12 Q. Was this group of persons you just
13 described for us present on each and every day, as
14 far as you know?

15 A. No. They were present on the 28th and
16 29th. It was a smaller group that was present on the
17 30th.

18 Q. All right, sir.

19 A. And my memory, though it is not
20 perfect on this, is that Kendrick Riggs and I were
21 present on the 30th and maybe Mr. Seelye. I don't
22 presently recall that anyone else was present on the
23 30th, though I could be -- my memory could be flawed
24 on that one.

25 Q. It's my understanding that the meeting

1 on the 30th was at the attorney general's office. Is
2 that correct?

3 A. That's correct.

4 Q. Other than that meeting, was the
5 larger team that you've described for us present at
6 all the other sessions?

7 A. My memory is that they were.

8 Q. Okay.

9 A. Again, there may have been -- the
10 meetings on the 28th and 29th were quite lengthy.
11 One or two people may have left before the conclusion
12 of a particular meeting or showed up later for a
13 particular meeting, depending on the issues being
14 addressed. But generally speaking, all members of
15 the team were present those two days.

16 Q. Okay. Focusing on a time line, 28th,
17 29th, 30th, prior to going to your meeting on the
18 30th at the attorney general's office, what was your
19 understanding of what had been resolved by the
20 parties?

21 A. Many issues had. We basically felt
22 like before that meeting that we had resolved
23 virtually all of the primary issues. There were a
24 couple of smaller issues that were not resolved, and
25 then the electric rate issue had not been resolved as

1 of the meeting on the 30th.

2 Q. Okay. And you're using a term that
3 I'm a little unfamiliar with. I'm familiar with the
4 term "revenue recognition." Does that mean anything
5 to you, or revenue requirement, rather?

6 A. Yes, revenue requirement.

7 Q. When you say "rate," are you referring
8 to the revenue requirements issue?

9 A. I am.

10 Q. Okay.

11 A. It's the revenue requirement that
12 drives the electric rates.

13 Q. All right, sir. So that had not been
14 agreed to as of -- clearly as of your meeting --
15 going to your meeting on the 30th.

16 A. That is correct.

17 Q. Did you have a sense that there was
18 agreement on most of the other issues?

19 A. Yes. There was some debate about
20 handling of an OMU issue that hadn't been fully
21 resolved. There was another -- I mean, we're talking
22 about in the context of \$100 plus million rate case,
23 these are issues related to dollar sums of a million
24 or less that remained, but they were -- still needed
25 clarification or they were definitional issues that

1 needed clarification. There were no other major
2 issues outstanding other than the revenue requirement
3 issues, as you described it a moment ago.

4 Q. All right, sir. Tell me about the
5 meeting on the 30th, as best you can recall. You've
6 described for me who was there for LG&E.

7 A. The others present included Dennis
8 Howard for the attorney general. The KIUC, and I
9 believe that was Mike Kurtz. And I believe there may
10 have been a young lady there for the low incomes, and
11 I don't recall either her name, nor am I certain she
12 was there.

13 Q. All right, sir. Any other
14 participants?

15 A. Richard Raff participated by
16 telephone. And I don't currently recall any others,
17 but, again, that was a shorter meeting. It took
18 place in a small conference room at the attorney
19 general's office. It was basically designed to see
20 if we could resolve the final issues. We had sign
21 off from all of the other interveners that were not
22 present, that they were happy about all issues
23 provided these remaining parties could get happy with
24 these final couple of -- the revenue requirements
25 issue and the other couple of minor issues I told you

1 about. In other words, they were all willing to not
2 participate in that final meeting because they
3 were -- they understood that they really had no high
4 level of interest in the resolution of those couple
5 of issues, and that if those key parties could get
6 together, they were going to be happy with the
7 result. I'm paraphrasing, not stating something that
8 was stated to me.

9 The meeting was held to determine
10 first whether LG&E would accept what was referred to
11 as -- and perhaps unkindly -- as the black box
12 settlement figure that had been proposed by the
13 commission staff the previous afternoon. And we
14 indicated in that meeting that we would go along
15 with, happily, the black box settlement figure. And
16 we discussed with parties who were present their
17 willingness to go along with that number. There was
18 general agreement regarding that issue.

19 It did require some further discussion
20 of the -- what I've called the OMU issue and how that
21 was going to be resolved. There was -- agreement was
22 reached on that issue. And whatever the other issue
23 is that I can't currently recall that was under
24 discussion that day was also resolved.

25 There was an understanding that LG&E

1 needed to clear its agreement with its parent board
2 of directors -- board of management, but that we
3 would recommend that to that board. And it was clear
4 that Mr. Howard had to get agreement from the
5 attorney general, but that he would recommend it and
6 he anticipated that he would get agreement.

7 And it was understood, of course, that
8 the commission ultimately had to review any
9 settlement and express its independent view with
10 regard to any settlement that was tendered to the
11 commission.

12 Q. Okay. Do I take it that no one -- no
13 commissioner participated either by phone or in
14 person?

15 A. They did not.

16 Q. Okay. Anything else you remember
17 about the events of the 30th?

18 A. No. That was the substance of the
19 meeting.

20 Q. Fair enough. May the 3rd would have
21 been the next business day. The prehearing
22 conference, if that's any assistance to you, was
23 scheduled for that day at the Public Service
24 Commission. Do you recall coming to the Public
25 Service Commission on that day? That would have been

1 Monday.

2 A. I'm a little fuzzy. I was thinking --
3 frankly, until you just said that, I was thinking
4 that we had a day off before the hearing resumed, but
5 you -- I'm not -- you have access to more specific
6 data than I've got in front of me, and I don't
7 recall. But I do remember that following the
8 weekend, whether it was the Monday or whether it was
9 the Tuesday, we resumed at the commission -- you're
10 correct, it was on Monday. And at that time
11 Mr. Howard informed us that the attorney general did
12 not agree. I'm sorry, I -- Mr. Goldberg, I'm a
13 little fuzzy about the timing.

14 Q. All right. Fair enough. You remember
15 sometime in the next week, either Monday or Tuesday,
16 that discussions resumed at the Public Service
17 Commission?

18 A. They did.

19 Q. All right. Were all parties present?

20 A. Yes.

21 Q. Okay. And you obviously have a
22 recollection of Mr. Howard announcing that there was
23 not an agreement --

24 A. That's correct.

25 Q. -- on revenue requirement.

1 A. That's correct.

2 Q. Okay.

3 A. For the electric side.

4 Q. For the electric side. Is that the
5 first item that you remember of significance and
6 consequence in that week, or was there something
7 else?

8 A. Well, it was certainly the most
9 significant event that occurred.

10 Q. Let me see if I can reference this for
11 you a little better. Do you believe that Mr. Howard
12 announced the fact the attorney general was not in
13 agreement on the same day the attorney general
14 actually first appeared?

15 A. I was thinking it was the day ahead.

16 Q. The day ahead.

17 A. The day before, and then the following
18 day the attorney general showed up at the commission
19 and requested a meeting with me.

20 Q. All right, sir. Now, I trust the
21 parties were negotiating other issues along with
22 revenue requirement. And even though it's your
23 belief there was some agreement, I presume working
24 out some of these details required a period of time
25 of discussion amongst the parties. Is that correct?

1 A. One of the things that took place over
2 the weekend was the drafting of a document to reflect
3 the agreement. And of course, not everyone had a
4 chance to read that at the same time, and it required
5 reading and feedback to be sure that the document
6 reflected the agreement of the parties. And there
7 was considerable debate over wording and particular
8 provisions of that agreement that went on for a
9 period of days.

10 Q. All right, sir. By way of example,
11 was it your understanding that there were still
12 issues with regard to rate design and rate allocation
13 being discussed on the --

14 A. Yes, you're correct.

15 Q. -- 4th, 5th and 6th?

16 A. That refreshes my recollection. Yes,
17 that is correct.

18 Q. Okay. Did you have a sense that there
19 was basic agreement on those issues and that there
20 was discussion about the details that needed to be
21 worked out, or was it --

22 A. Yes, I think that's fair. I think
23 there was broad understanding and expectation of
24 agreement, but there were details associated with it.

25 Q. Okay. Am I understanding it's your

1 recollection that it's Mr. Howard who made the
2 announcement that the attorney general was not in
3 agreement?

4 A. It is.

5 Q. Okay. And when I say "not in
6 agreement," I'm referring to not in agreement with
7 the revenue requirements understanding that you
8 developed on April the 30th.

9 A. That was the way I understood your
10 question.

11 Q. All right, sir. Do you recall what
12 time of the day, morning, afternoon, that he made his
13 announcement?

14 A. My memory is it was later in the day
15 because he couldn't get a meeting with the AG until
16 midday-ish. I don't remember what time he walked in
17 to the commission to announce that the attorney
18 general was not in agreement, but it was not at the
19 starting day. That, I'm confident of.

20 Q. Okay. Is it your sense it was the
21 first full day of negotiations that week or was it
22 the second full day of negotiations?

23 A. My memory is it was the first.

24 Q. All right. What course of action did
25 you take when you learned that?

1 A. I don't recall specifically taking a
2 direct role. I believe LG&E, through its team, was
3 trying real hard to understand what the issues were,
4 what the problems were from the attorney general,
5 from Dennis Howard, because we were frankly amazed by
6 this development. And at some point we began trying
7 to figure out how to carve the attorney general out
8 of a settlement on the electric revenue requirements
9 issue and still reach agreement on all other issues
10 relating to the rate case.

11 Q. Do you have a recollection of what the
12 response of the KIUC and other interveners was to the
13 news of Mr. Howard?

14 A. They were as shocked at we were.

15 Q. All right.

16 A. And as upset.

17 Q. I take it the parties continued to
18 negotiate with each other.

19 A. We did, including with the attorney
20 general.

21 Q. Okay. And the attorney general --

22 A. Or the attorney general's
23 representative --

24 Q. Right.

25 A. -- on all matters other than that one

1 issue. And he, frankly, was pretty firm with regard
2 to the attorney general's unwillingness to accept
3 the -- what I earlier referred to as black box
4 figure.

5 Q. Okay. Memory is fleeting on these
6 things. I'm trying to get an understanding of
7 whether or not, as of learning from Mr. Howard that
8 the attorney general was not in agreement, whether
9 prior to that time you thought there was an actual
10 agreement that had been agreed to by the attorney
11 general.

12 A. Absolutely.

13 Q. Okay.

14 A. In fact, I had reported it back to my
15 boss and our parent company that we had an agreement.
16 I made it clear what the conditions of that agreement
17 were, which were subject to board approval by LG&E,
18 subject to the attorney general's final approval and
19 subject to the commission's approval, but that we had
20 a commitment from all of the parties that they would
21 recommend --

22 Q. Okay.

23 A. -- the settlement.

24 Q. And did you develop that understanding
25 by the conclusion of the April 30th meeting?

1 A. I did.

2 Q. All right. So that I'm clear, was it
3 your understanding that before you left on April the
4 30th, that Mr. Howard had authority to say we have a
5 tentative agreement of some kind?

6 A. It was my -- from Mr. Howard, I had
7 been told that he was keeping the attorney general
8 well informed of all discussions. And, therefore, I
9 viewed his statement that he needed the AG's sign off
10 to be a formality, as opposed to going for the first
11 time and informing the AG of a proposed settlement
12 and having the AG exercise independent judgment with
13 respect to it. I was under the clear impression that
14 the attorney general had been involved with his own
15 team in the discussions about this settlement from
16 the outset.

17 Q. All right. So do I take it you were
18 surprised, then, to learn from Mr. Howard that during
19 the week of the 3rd, 4th, 5th, 6th, that the attorney
20 general was no longer in agreement?

21 A. I was.

22 Q. Okay. Do you recall how late on the
23 same day that you learned the attorney general was
24 not in agreement that the parties continued
25 negotiating?

1 A. I do not. There was one day we went
2 very, very late. Whether it was that day or one of
3 the days from the previous week, I simply do not now
4 recall.

5 Q. Okay. Let's turn the page to the next
6 day, which I believe would be May the 5th or May the
7 6th.

8 A. May the 4th, wasn't it?

9 Q. Well, May 4th, 5th.

10 A. Yes, yes.

11 Q. And do you have a recollection of the
12 attorney general coming to the premises?

13 A. I do.

14 Q. Okay.

15 A. I first heard that he was involved in
16 a press conference out in front of the building, is
17 my recollection. And then I did not know whether he
18 was still at the PSC or not, but subsequently I
19 believe Mr. Howard came and told me that the attorney
20 general was still in the building and wanted to talk
21 to me. Kendrick Riggs and I went to an office there
22 at the commission. The attorney general, Mr. Howard
23 and I believe Betsy Blackford were all present. And
24 I don't remember the specifics, but the message he
25 relayed was that he -- Attorney General Stumbo

1 apologized to me for what he essentially
2 characterized as a failure of his team to understand
3 their authority or to understand his communications
4 with them, and that they had incorrectly communicated
5 his approval of the settlement amount.

6 Both I and -- I accepted his apology
7 and urged him to reconsider. I think Mr. Riggs
8 joined in that effort to urge him to reconsider.
9 Whereupon he told me that he knew that LG&E was
10 willing to accept less than the black box figure and
11 that his -- his experts had confirmed to him that the
12 maximum allowable revenue requirement that they could
13 come up with was \$96 million, and we should accept
14 \$96 million.

15 I told him he was absolutely wrong,
16 that we would were not willing to accept less than
17 the proposal. In fact, our minimum requirements were
18 significantly above the amount of the black box
19 settlement, that we filed a rate case, based on
20 substantial evidence and supporting data, that
21 reflected \$140 million revenue requirement, and that
22 the acceptance of the \$101.4 million black box figure
23 was substantially below what we considered a minimal
24 accepted figure, and that just as we were making a
25 compromise, a painful and sacrificial compromise, I

1 expected the same from the attorney general. And if
2 his experts were telling him \$96 million, it was only
3 a \$5 million move for him to get to that settlement,
4 and it was a -- I think a \$20 some odd million move
5 for us to get to that settlement. And that,
6 therefore, he should approach this with the same
7 spirit of compromise that we had, which would lead to
8 a settlement.

9 Q. How long was the meeting?

10 A. Relatively brief. I would say under
11 10 minutes.

12 Q. Do you remember anything else?

13 A. About that meeting, I do not.

14 Q. Do you remember talking to Mr. Howard
15 or Ms. Blackford about that meeting?

16 A. I believe I did. I mean, obviously
17 Mr. Howard is the one, as I recall, who came and got
18 me for the meeting, so I had that conversation with
19 him. But I believe subsequently I repeated to him
20 essentially what I'd said to the attorney general,
21 that it just seemed hard for me to accept or believe
22 that the attorney general, who had shown no
23 interest -- public interest in this entire proceeding
24 up until that day, would suddenly torpedo a
25 settlement that the parties had negotiated over so

1 hard and -- with his full participation, and that
2 they would, what appeared to me over a \$5 million
3 issue, blow up an otherwise significant historic
4 settlement for the people of Kentucky.

5 Q. Okay. Why did you believe it to be
6 historic?

7 A. Because I was not aware of any other
8 occasion where a -- in Kentucky where a complete rate
9 case had ever been resolved by settlement. And I
10 thought that the fact that the parties could come
11 together and negotiate in good faith to reach a
12 settlement was a great benefit to Kentucky, to the
13 state and to the people of Kentucky, and that he
14 appeared to be torpedoing it for reasons that he
15 could not articulate and never did articulate other
16 than his personal conviction that we should have been
17 willing to accept less.

18 Q. Did Mr. Howard, Ms. Blackford say
19 anything in the meeting with the attorney general, or
20 were they quiet during the meeting?

21 A. My recollection is they were quiet.

22 Q. And I asked you, did you have any
23 conversations with them subsequent. You've just --
24 do you recall Mr. Howard or Ms. Blackford
25 communicating to you their disappointment in the

1 attorney general's --

2 A. I do.

3 Q. -- decision?

4 A. I do, I do. I had very much
5 appreciated the tough negotiation that they had
6 engaged in in the days preceding that, and I
7 respected both their professional skills and their
8 involvement in the negotiations. And I was a bit
9 dismayed that they would have led us down one path
10 and then we would have had this reversal. I think
11 they were -- understood that that was my view, and
12 there was an apology to me -- or it may have been to
13 us -- and by that I can't remember who else might
14 have been present -- that this had occurred.

15 Q. Okay. And when do you recall that
16 being given?

17 A. It was within either the same day or
18 the next day of that event.

19 Q. Let me get you to reverse yourself a
20 little bit in terms of time and go back to
21 April 30th. Did you have the understanding that
22 while you were participating in the discussion of
23 April 30th at the attorney general's office that
24 Mr. Howard was communicating directly with the
25 attorney general?

1 A. There were some that expressed
2 statements about that. I can't tell you which --
3 precisely at what points they occurred, but there had
4 been an earlier reversal of some -- I don't recall
5 the specifics -- in which Mr. Howard had come in
6 and -- indicated an agreement and then come back the
7 next day and said, "I talked to the attorney general
8 and he's changed his mind," or something and we
9 renegotiated that point. Again, I don't recall
10 precisely what it was, but it was very apparent to me
11 that the attorney general was to some level involved
12 in receiving information about the negotiations and
13 expressing opinions about them.

14 Q. Okay. Other than this 10-minute
15 conversation that you had with the attorney general
16 on the day he first came to the PSC, did you ever
17 have any other conferences with the attorney general
18 where he personally participated?

19 A. Only the attorney general's interview
20 of me which occurred in the course of the attorney
21 general's investigation.

22 Q. Okay. Other than that?

23 A. No.

24 Q. All right. And specifically from the
25 period April 28th through May 12th, 2004.

1 A. None.

2 Q. Okay. Except for this exchange
3 between you -- you and Mr. Riggs and the attorney
4 general and his two staff members, did you ever have
5 any other meetings where there was just you and one
6 of the other interveners?

7 A. On issues relating to the --

8 Q. Regarding the rate cases.

9 A. That would be very difficult for me to
10 say no to because in the context of the days of
11 discussion, settlement discussion, there were
12 discussions among individuals where I think I recall
13 Mike Kurtz of the KIUC coming up to me and saying,
14 "What's going on with the attorney general? Why" --
15 "why is he being" -- and I don't recall the word
16 squirrly, but "Why is he changing his mind about
17 settlement?" showing some real discomfort with the
18 attorney general's position. Is that discussion
19 about the rate case? I think it is. My recollection
20 is that was between the two of us. Whether other
21 people were where they could overhear that or not, I
22 don't recall. Mr. Howard spoke to me at one point
23 during the negotiations alone about asking us to
24 accept a reduction of \$400,000 in our demand over a
25 particular issue. That was a one-on-one discussion.

1 Q. That was not related to revenue
2 recognition on the electricity?

3 A. It was related to revenue recognition
4 on electricity. It was either that -- it was either
5 related to that or a related issue of this OMU issue
6 I described earlier, which impacted revenue. And --
7 I mean, I got a little bit involved in the NAS
8 discussions. Other interveners weren't interested in
9 that discussion. I believe I had some direct
10 discussions with David Brown, representative of
11 Kroger, a lawyer for Kroger, about the Kroger
12 settlement. But those were all in the context of the
13 overall settlement. There were never any
14 discussions, outside the knowledge of or
15 participation of other parties, with any member of
16 the commission or the commission staff.

17 Q. All right, sir. Do you recall whether
18 or not -- well, I take it this occurred sometime --
19 this meeting with the attorney general, sometime
20 during the day of -- you can't pick -- you don't know
21 really the exact date. Do you have any -- days of
22 the week wise, do you have a sense of it?

23 A. If -- if the hearing was scheduled to
24 begin on the 4th --

25 Q. Yes, sir.

1 A. -- I believe it was on the 4th.

2 Q. Okay. So it would have been the first
3 day of actual hearing that it was actually scheduled?

4 A. Yes, but that first day of hearing was
5 postponed in order to allow more time for settlement
6 discussion. So the actual hearing hadn't begun, but
7 it was scheduled to have begun.

8 Q. Did the actual hearing begin the day
9 of the conversation with the attorney general? When
10 I say "the actual hearing," testimony being put in?

11 A. I don't recall whether it was later
12 that day or the following morning that the actual
13 testimony began.

14 Q. All right. Take me through the -- the
15 next day, if you will, as you recall it.

16 A. Whenever testimony began, whether it
17 was later that day or the following day, the hearing
18 began. There were further efforts to see if there
19 was any movement on the part of the attorney general.
20 There was not, so evidence was taken, witnesses --
21 some witnesses were cross-examined, and the hearing
22 concluded over the course of roughly three days.

23 Q. Okay. Do you recall a time --
24 specifically I will give you the date -- May the
25 6th -- where Mr. Raff at the beginning of a hearing

1 date put on the record that he had heard an interview
2 with the attorney general and that the attorney
3 general had made the statement that he believed there
4 was collusion going on with regard to the rate cases
5 and the hearing of them? Do you recall that?

6 A. I do recall that. My recollection is
7 that that was a radio -- or I didn't hear the
8 broadcast, but that I had been told that there was a
9 radio broadcast in which the attorney general had
10 alleged that he believed there was collusion with
11 regard to the rate case settlement, improper
12 activity, conduct by the parties that included
13 collusion in the rate case settlement. It was
14 subsequent to my meeting with the attorney general.
15 I know that. I know that the attorney general in his
16 meeting with me said nothing about any impropriety
17 whatsoever.

18 And as a result of the information
19 about that radio broadcast, the -- I believe both the
20 chairman and Mr. Raff inquired of the parties whether
21 they had any knowledge of any impropriety or any
22 collusion or misconduct of any kind. That question
23 was specifically directed at Mr. Howard. I don't
24 remember whether it was also directed at
25 Ms. Blackford, but if she was present, I feel sure

1 that it was. And it then was directed at each of the
2 other parties present, both LG&E and the other
3 interveners.

4 Q. All right, sir. Do you recall
5 Mr. Riggs making a statement on the record dealing
6 with -- or calling upon anybody if they did not think
7 the process was fair, to come forward?

8 A. I do.

9 Q. Okay. Tell me -- I --

10 A. He made, I thought, a rather eloquent
11 appeal to anyone present in the hearing room who had
12 any knowledge of any impropriety to speak up so we
13 could all know about what it was that was alleged to
14 have occurred.

15 Q. And this occurred immediately after
16 Chairman Goss' colloquy with everyone?

17 A. It did.

18 Q. Okay.

19 A. Or in the context of that. His
20 examination of -- of the all the parties present.

21 Q. Okay. Did anyone step forward to say
22 they thought the process was unfair?

23 A. No one expressed the view that they
24 had any knowledge of any misconduct of any kind.
25 Mr. Howard, I believe, made a comment like, "I am not

1 aware of any misconduct having occurred or any
2 collusion having occurred, but I was not necessarily
3 present at all discussions that took place."

4 And I believe he got examined on that
5 or -- to the effect of, "Are you suggesting that
6 something did occur outside your hearing?" to which
7 he responded again, "I'm not aware of anything, but I
8 wasn't present always."

9 Q. To your knowledge, was he present
10 always?

11 A. He was not, for example, present in
12 all of the NAS discussions, which I indicated I was
13 not present. To my knowledge, he was present in any
14 discussion, any discussion occurring relating to
15 electric revenue requirements in which I had any
16 participation or any other LG&E representative had
17 any participation.

18 Q. All right, sir. And so that I am
19 clear, by close of hearing on May the 6th, was it
20 your understanding that there was agreement on
21 everything but revenue requirements on electricity?

22 A. That's correct.

23 Q. Okay. And did the attorney general
24 and his staff sign off on, as being agreed, all items
25 other than revenue requirement on electricity?

1 A. That is correct.

2 Q. Okay. And specifically what I'm
3 referring to is anything to do with rate design.
4 Were they in agreement with that? Was that your
5 understanding?

6 A. He was.

7 Q. Anything to do with rate allocation?

8 A. He was.

9 Q. Okay. And --

10 A. Same with regard to the gas revenue
11 requirement.

12 Q. Okay. And those four elements, adding
13 revenue requirement and electricity, really form the
14 basis of the agreement, do they not?

15 A. They do.

16 Q. So as of close of business, May 6,
17 2004, close of hearing, all those items were in
18 agreement by all parties except for revenue
19 requirement on electricity, and the attorney general
20 was the only entity or party not in agreement.

21 A. That's correct.

22 Q. All right, sir. Do you recall being
23 present on May the 12th, 2004?

24 A. I do.

25 Q. Okay. Tell me what you recall of the

1 events of May the 12th. It would have been six days
2 after the last session on May 6th.

3 A. That was basically a resumption of the
4 hearing for the purpose of presenting to the
5 commission the agreed document that had been
6 circulated for all parties to review. And my very
7 vague recollection, because I have not reviewed
8 anything with regard to what occurred that day, is
9 that there was testimony offered to the effect that
10 this document represented the full agreement of all
11 parties and that all signatures required for -- to
12 reflect that agreement had been obtained as of that
13 day.

14 Q. Okay. As you left on May the 12th,
15 2004, what issue or issues did you think were
16 unresolved and subject to determination by the Public
17 Service Commission?

18 A. All issues were resolved by settlement
19 on all matters including electric revenue
20 requirements with all parties except the attorney
21 general who had not agreed to the electric revenue
22 requirement only. That was the only exception he had
23 to the agreement.

24 Q. So I take it that was the only thing
25 submitted for decision to the Public Service

1 Commission, or was the settlement agreement --

2 A. The entire agreement was submitted to
3 the commission.

4 Q. Let me rephrase that. The only thing
5 that was not resolved by the parties themselves was
6 revenue requirement -- the electrical piece,
7 electricity piece.

8 A. That is correct.

9 Q. But obviously the Public Service
10 Commission had to look at the agreement as a whole
11 and give its approval.

12 A. That's correct.

13 Q. All right, sir. Do you have a
14 recollection of what transpired after that, May the
15 12th? Did you ultimately get a decision back from
16 the Public Service Commission?

17 A. We did. It was at the -- my
18 recollection is it was at the end of June. I don't
19 remember the specific date, but before that, again,
20 my memory is roughly mid June we received subpoenas
21 from the attorney general regarding the
22 implementation of an investigation into ex parte
23 contacts in connection with the rate case.

24 Q. All right, sir. I take it it's your
25 understanding, then, that those subpoenas were

1 received prior to determination by the Public Service
2 Commission.

3 A. They were.

4 Q. Short -- in time shortly before?

5 A. A couple of weeks, is my recollection.

6 Q. All right. Did you have any
7 meetings -- are you aware of any meetings --

8 A. Let me just -- I don't want to relate
9 my legal advice, but given the reaction -- facial
10 reaction of my counsel, I may be wrong about that
11 timing.

12 MR. SNYDER: I recall the subpoenas
13 being issued in early July because I was in Europe at
14 the time and I recall getting a call at an odd time
15 of day in Copenhagen.

16 A. The record will be what the record is.

17 Q. It is a statement, Mr. McCall. If we
18 were -- in the old days if it was a deposition, I'd
19 object to counsel's testimony. But it's for the
20 record to keep it straight. If that's what it was,
21 it was.

22 MR. SNYDER: I think you're right
23 about the timing of the PSC's decision, but I think
24 the subpoenas came shortly after that.

25 A. Let me say it on the record. My

1 recollection is that the attorney general said
2 nothing following the conclusion of the rate case.
3 And it was a period of weeks before we were aware
4 that he was concerned about how the settlement had
5 been achieved, other than a brief radio comment that
6 I had not heard, but had heard about. And it was
7 quite a surprise to me to find out that he was going
8 to press the issue further because he had said
9 nothing further in the course of the formal
10 proceeding.

11 Q. Were there any discussions, to your
12 knowledge, with the attorney general or his staff
13 between May the 12th, 2004 and the decision rendered
14 by the Public Service Commission?

15 A. I'm not aware of any.

16 Q. Okay. Let me ask you a question about
17 your internal understanding of something. Are you
18 familiar with the Louisville Gas & Electric versus
19 Cowan case?

20 A. I am.

21 Q. Okay. I trust, as general counsel,
22 you have read that on occasion.

23 A. I have.

24 Q. Okay. And are aware of its teachings
25 as it relates to ex parte communication.

1 A. I am aware.

2 Q. Okay. Since that deals with
3 Louisville Gas & Electric, I'm curious whether or not
4 the teachings of that case have been adopted by
5 Louisville Gas & Electric and KU as part of its
6 teachings and understandings imparted to its
7 employees.

8 A. It has. It's been a subject of
9 frequent discussion, conversation, instruction,
10 indoctrination of new people, et cetera.

11 Q. It's part of the training package at
12 LG&E/KU?

13 A. It is for the people who deal with the
14 Public Service Commission. We don't do that with
15 every employee.

16 Q. When you say those who deal with
17 Public Service Commission, would that be all the
18 regulatory folks?

19 A. All the regulatory people who have
20 occasion to have contacts with the commission.

21 Q. All right, sir. And just in short, so
22 we can make this part of your statement, what do you
23 believe is the admonition of the Cowan case as it's
24 imparted to those employees who need to know at
25 LG&E/KU?

1 A. It is that they are not to have
2 substantive communication with the commission
3 regarding any matter pending before the commission or
4 to be pending before the commission or its -- or with
5 the commission staff.

6 Q. All right, sir. Do you have any
7 knowledge of any contact that would come within that
8 prohibition made by any employee of LG&E/KU with
9 commission members?

10 A. I do not.

11 Q. Okay. Let me ask you the same
12 question with regard to staff.

13 A. Same answer, I do not.

14 MR. GOLDBERG: All right, sir. That's
15 all I have. Thanks.

16 THE WITNESS: Thank you, sir.

17

18 (STATEMENT CONCLUDED AT 11:55 A.M.)

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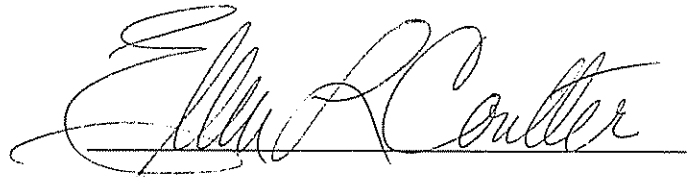
1 STATE OF KENTUCKY)(
 2 COUNTY OF JEFFERSON)(SS:
 3

4 I, ELLEN L. COULTER, Notary Public,
 5 State of Kentucky at Large, hereby certify that the
 6 foregoing sworn statement was taken at the time and
 7 place stated in the caption; that the appearances
 8 were as set forth in the caption; that prior to
 9 giving testimony the witness was first duly sworn by
 10 me; that said testimony was taken down by me in
 11 stenographic notes and thereafter reduced under my
 12 supervision to the foregoing typewritten pages and
 13 that said typewritten transcript is a true, accurate
 14 and complete record of my stenographic notes so
 15 taken.

16 I further certify that I am not
 17 related by blood or marriage to any of the parties
 18 hereto and that I have no interest in the outcome of
 19 captioned case.

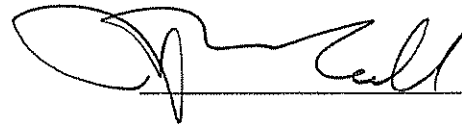
20 My commission as Notary Public expires
 21 November 5, 2007.

22 Given under my hand this the 8th
 23 day of August, 2005, at Louisville,
 24 Kentucky.

25 

ELLEN L. COULTER
 NOTARY PUBLIC

1 I, the undersigned, JOHN McCALL, do hereby
2 certify that I have read the foregoing sworn
3 statement, and that, to the best of my knowledge,
4 said sworn statement is true and accurate, with the
5 exception of the corrections, if any, listed on the
6 errata sheet.

7 

8
9 JOHN McCALL

10
11 Subscribed and sworn to before me this 31st
12 day of August, 2005.

13
14
15
16 
17 NOTARY PUBLIC

18
19 My commission expires August 5, 2008
20
21
22
23
24
25

COULTER REPORTING, LLC
101 EAST KENTUCKY STREET, SUITE 200
LOUISVILLE, KY 40203

ERRATA SHEET

NAME John McCall DATE OF DEPOSITION July 28, 2005

After having read my deposition, I wish to make the following changes: None

Page _____ Line _____

Change _____

Reason for change _____

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Reason for change _____

-- [1] 38/15 LLC [3] 4/19 4/21 9/18 LLC's [1] 18/24 -- -- [116] A a -- [4] 5/16 8/15 34/4 35/8 a.m [2] 3/6 50/18 able [1] 15/7 about [42] 4/4 10/4 10/14 11/9 11/16 11/21 12/4 12/16 12/23 13/6 14/6 14/10 17/15 18/7 18/20 18/22 21/19 21/22 22/4 22/22 23/1 24/17 25/13 27/20 31/15 34/13 34/15 37/2 37/12 37/13 38/16 38/19 38/23 39/11 41/16 41/19 42/13 47/10 47/23 48/4 48/6 48/16 above [1] 33/18 absolutely [2] 30/12 33/15 accept [8] 23/10 30/2 33/10 33/13 33/16 34/21 35/17 38/24 acceptable [1] 16/18 acceptance [1] 33/22 accepted [2] 33/6 33/24 access [1] 25/5 accurate [1] 51/8 achieved [2] 16/13 48/5 acquainted [1] 3/14 action [1] 28/24 actively [1] 6/2 activity [1] 41/12 actual [9] 7/6 9/22 13/22 30/9 40/3 40/6 40/8 40/10 40/12 actually [4] 5/24 9/10 26/14 40/3 adding [1] 44/12 address [1] 4/14 addressed [1] 20/14 ADJUSTMENT [2] 1/5 1/10 admonition [1] 49/23 adopted [1] 49/4 advice [1] 47/9 Aegon [1] 2/10 affairs [1] 7/16 after [5] 8/9 42/15 45/2 46/14 47/24 afternoon [2] 23/13 28/12 AG [3] 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